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No. 85-1196

Supreme Court, U.S.
FILED
MAR 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

CITY OF CHARLOTTESVILLE, VIRGINIA,
Petitioner,
v.
FEDERAL ENERGY REGULATORY COMMISSION,
COLUMBIA GAS TRANSMISSION CORPORATION,
COLUMBIA GULF TRANSMISSION COMPANY,
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF RESPONDENTS COLUMBIA GAS TRANSMISSION CORPORATION AND COLUMBIA GULF TRANSMISSION COMPANY IN OPPOSITION

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March 1986

QUESTION PRESENTED

Whether the "stand-alone" method used by the Federal Energy Regulatory Commission for calculating the federal income tax allowances in rates of pipelines that join with other affiliates in filing consolidated federal income tax returns—a method by which the pipelines are treated as nearly as possible as separate entities—is a rational choice among various policy alternatives which the Commission satisfactorily explained and supported.

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BRIEF OF RESPONDENTS COLUMBIA GAS TRANSMISSION CORPORATION AND COLUMBIA GULF TRANSMISSION COMPANY IN OPPOSITION

Respondents, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company ("Columbia pipelines"), which were intervenors below, oppose the petition for writ of certiorari.[1] Stripped of its rhetoric and mischaracterizations, the petition fails to present any issue that merits review by this Court.

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[1] The Columbia pipelines are wholly owned subsidiaries of The Columbia Gas System, Inc., a natural gas public utility holding company, subject to the Public Utility Holding Company Act of 1935, as amended, 15 U.S.C. §§ 79-79z-6 (1982). During the period

COUNTERSTATEMENT OF THE CASE

Introduction

This ratemaking case arises under Section 4 of the Natural Gas Act, 15 U.S.C. § 717c (1982). The only issue confronting the Federal Energy Regulatory Commission ("Commission") was how to determine the federal income tax allowances ("tax allowances") included in the rates of the Columbia pipelines which join with other companies in the Columbia System in filing consolidated tax returns. All other matters, including the rate of return, were settled by agreement that left open only the amount of the tax allowances. (Pet. App. 8a, n.3).[2]

Since 1947 the Columbia Gas System has filed consolidated federal income tax returns, because that results in less tax liability than would be the case if each company in the System filed separate returns on the same basis reflected in the consolidated return. The resulting difference is sometimes referred to as "consolidated tax savings". This term is something of a misnomer because, as the Commission and the court below noted, many of the same "savings" could be achieved by using various of the other options permitted by the Internal Revenue Code, instead of filing consolidated returns.[3] In this case

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in question here, the System consisted of the parent company and 16 wholly owned subsidiaries engaged in various aspects of the natural gas business.

In compliance with Rule 28.1, the Columbia pipelines state that they have no parents, subsidiaries or affiliates except as stated above.

[2] This and similar references are to the separately printed Appendix to the Petition.

[3] See Pet. App. 51a and n.16, 73a-74a, 84a-87a, 22a-23a.

Similarly, as discussed *infra*, pp. 8-9 and notes 14, 15, the petitioner is wrong in contending that Columbia's ratepayers are being unjustly denied a fair share of the consolidated tax "savings" and are being charged for grossly unreasonable tax allowances.

there were two kinds of consolidated tax "savings".[4] One kind resulted from the losses of four subsidiaries engaged in gas exploration and supply activities (Pet. App. 53a-54a). The other kind resulted from the parent company's interest expense. The parent does the borrowing for the System and, because it has more debt in its capitalization than its subsidiaries, it pays more interest than it receives. As a result, the parent reports a loss each year which produces "savings" in the consolidated return. (Pet. App. 52a-53a).

In this case the Commission held that the tax allowances should be determined in accordance with the "stand-alone" policy first announced in 1972 in its *Florida Gas* decision.[5] In that proceeding, the Commission stated that "a utility should be regulated on the basis of its being an independent entity; that is, a utility should be considered as nearly as possible on its own merits and not on those of its affiliates." 47 F.P.C. at 363. Since 1972, the Commission has uniformly applied this policy in all areas of its responsibility, not just in determining the tax allowance component of a pipeline's rates.

Applying its stand-alone policy to the facts of this case, the Commission has twice held that the Columbia pipelines' ratepayers are entitled to their appropriate share of the "savings" resulting from the parent's interest expense, but are not entitled to any of the "savings" resulting from the losses of the exploration and supply subsidiaries.

Petitioner challenges the Commission's use of the stand-alone policy, asserting that it violates an alleged immutable "actual taxes paid" principle. This challenge

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[4] As noted below, a third kind (involving losses of a distribution subsidiary) is no longer in contention. Pet. App. 44a, n.8; 57a, n.26; *City of Charlottesville v. FERC*, 661 F.2d 945, 952 (D.C. Cir. 1981).

[5] *Florida Gas Transmission Co.*, 47 F.P.C. 341 (1972).

not only misstates the policy.[6] It is also made blindly, without discussion of the Commission's reasoning, without recognition of the fact that some of the consolidated tax "savings" were in fact reflected by the Commission in the tax allowances, and without specifying what the Commission should have done instead. Thus the petitioner does not articulate how its "actual taxes paid" concept should be applied. At various stages of the proceedings below petitioner suggested use of an effective income tax rate, representing the Columbia pipelines' pro rata share of the taxes reflected on the consolidated tax return. Now, petitioner states that it is "less concerned" about the "actual formula" used by the Commission than it is that there be "*some* equitable sharing" of the so-called tax savings resulting from the filing of a consoli-

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[6] As it has done throughout this proceeding, petitioner mischaracterizes the Commission's stand-alone policy as ignoring the consolidated returns and as calculating the tax allowance "as though each [pipeline] were an independent entity filing a separate FIT return." Petition at 5, 7-8.

That is flatly wrong. As the Commission explained, the stand-alone policy "does not ignore the consolidated return", and it "'takes into account the revenues and costs entering into the regulated cost of service without increase or decrease for tax gains or losses related to other activities'", whether such activities are reported on a separate or a consolidated return. (Pet. App. 49a-51a). On the other hand, a so-called "separate return tax" refers to the hypothetical tax that a pipeline would have paid if it had filed a separate federal income tax return and had elected to take precisely the same tax deductions as it took as part of the consolidated return. But because the consolidated group has control over how to treat certain expenses reflected in the consolidated tax return, there can be no assurance that the same deductions would have been taken in a separate return. The stand-alone policy, on the other hand, does not depend on how the consolidated group chooses to treat the expense for tax purposes. The only question is whether the expense is one borne by the ratepayers. See generally Pet. App. 49a-54a, where the Commission further explains the difference between the stand-alone and separate return approaches and exposes petitioner's incorrect characterization.

dated income tax return.[7] Without acknowledging that the Commission already has ordered "some equitable sharing", petitioner concedes that the "Commission is free (within reasonable limits) to select the particular method of sharing the consolidated tax savings." [8] The real question then is whether the "stand-alone" method chosen by the Commission reasonably accomplishes this result. The Commission and the court below concluded that it does.

The initial Commission decision and court review

The Commission's first decision in this case was Opinion No. 47.[9] Following the "stand-alone" policy stated in *Florida Gas*—that "a utility should be considered as nearly as possible on its own merits and not on those of its affiliates"—the Commission held that the tax reductions arising from losses incurred by the four gas exploration and supply companies should not be shared, relying in part on a so-called "incentive rationale"—*i.e.*, sharing the "tax savings from losses incurred in the search for gas supplies will operate as a disincentive to continued gas supply development activities by pipelines and other regulated utilities." [10] The Commission also held that, since the interest expense of the parent company was charged in part to the Columbia pipeline ratepayers, the resulting consolidated tax savings should be appropriately shared with them. The Commission found, however, that this had been accomplished by using the parent company's capital structure and costs in computing the return and tax allowances, as already had been agreed upon in the settlement of other issues in the case. The Commission concluded that if the so-called effective

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[7] Petition at 9 (emphasis in the original).

[8] *Id.* at 21.

[9] *Columbia Gulf Transmission Co.*, 8 FERC (CCH) ¶ 61,002 (1979).

[10] *Id.* at 61,008.

tax rate were used, as petitioner urged, the benefit of the parent's interest expense would be passed through twice to the ratepayers.[11]

The Commission unanimously denied rehearing by Opinion 47-A, 9 FERC (CCH) ¶ 61,355 (1979).

On appeal, petitioner urged reversal on the ground that the stand-alone policy conflicted with the "actual taxes paid" doctrine allegedly established in *FPC v. United Gas Pipe Line Co.*, 386 U.S. 237 (1967). The court of appeals rejected that contention. Noting that "the complexities of accounting, business organization and tax laws often preclude finding any one 'actual' cost", the court held that the Commission had the "legal authority to do what it did in this case," but had failed adequately to "specify the evidence on which the rate orders were premised." The court accordingly remanded the "case to the Commission for further consideration." *City of Charlottesville v. FERC*, 661 F.2d 945, 952 n.38, 953, 947 (D.C. Cir. 1981) (*"Charlottesville I"*).

The present Commission decision and the second court review

Following the remand, the Commission ordered further hearings at which voluminous additional evidence was submitted. Thereafter the Commission issued Opinion No. 173 (Pet. App. 38a-98a, 23 FERC (CCH) ¶ 61,396 (1983)), completely reexamining and reaffirming the stand-alone policy. The Commission comprehensively reviewed the complex issue of how to determine an appropriate tax allowance for ratemaking purposes when jurisdictional companies such as the Columbia pipelines join in filing consolidated tax returns with nonjurisdictional affiliated companies. After noting its long experience trying to grapple with this issue, the Commission concluded that its stand-alone policy was the most cost-based and reasonable method of allocating the tax savings resulting from the filing of a consolidated tax return (Pet. App. 44a-45a, n.8):

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[11] *Id.*

> "In reviewing this record we have reconsidered the policy question from the ground up. Though we reach the same result on that question as did the Commission in Opinion No. 47 and Opinion No. 47-A, we do so for considerably different reasons. Specifically, we place no reliance on what has come to be called the 'incentive rationale' that the Commission relied on in those Opinions. We do so because the policy the Commission applied is broader and more fundamental than one needed to encourage gas supplies. The policy involves a basic decision about the proper way to set cost-based rates. As such, the policy applies not only when a pipeline joins with an exploration affiliate in filing a consolidated return but also when any jurisdictional company, be it a pipeline or an electric utility, joins with other businesses in filing a consolidated return."

The Commission stressed that the stand-alone method —with its cost of service and "benefits/burdens" approach—provides the fairest and most equitable sharing of consolidated tax savings. (Pet. App. 46a-49a). That approach allocates to ratepayers "any tax reducing benefits, or savings, the company realizes in providing [jurisdictional] service", but it does not allocate to the ratepayers savings created by expenses that were not "included in the cost of service (because the company did not incur that expense in providing service)". (Pet. App. 48a).[12]

The Commission explained that its earlier "flow through" method of proportionally sharing consolidated tax savings had achieved satisfactory results under the relatively simple circumstances then obtaining (Pet.

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[12] Ratepayers are thus protected from having to pay for expenses not properly included in their costs of service. *See e.g., Distrigas of Massachusetts Corp. v. FERC*, 737 F.2d 1208 (1st Cir. 1984) (Regulated company may not charge to ratepayers extra tax liability incurred as a result of accelerated depreciation taken by the company prior to its regulation by the Commission and not shared with the ratepayers). See also Pet. App. 65a and n.48.

App. 55a-56a). However, the facts "are no longer so simple", and a change to the stand-alone policy was necessary for two principal reasons (Pet. App. 56a-57a):

First, the Commission noted that since the 1950's, when the flow through method was first used, the structure of the natural gas industry had changed significantly. Then, the losses giving rise to the consolidated tax savings were primarily limited to those generated by the parent company's interest payments—savings that still are reflected in a utility's rates under the stand-alone policy, as they are in the tax allowances for the Columbia pipelines in this case. Now, however, the Commission noted that pipelines are greatly diversified, affiliating not only with companies engaged in different aspects of the gas or oil industry, but also with companies engaged in activities that have nothing at all to do with that industry. As a result of such diversification, the Commission found itself separating the costs of jurisdictional and nonjurisdictional businesses for ratemaking purposes, as well as its more traditional function of separating the costs of different jurisdictional services. The Commission concluded that the principles that guided its work in these areas were the same principles underlying its stand-alone policy.[13]

The second major reason the Commission cited for adopting and adhering to its stand-alone policy related to changes in the tax laws over the last quarter century (Pet. App. 67a). Those changes primarily involve timing differences between when an expense is recognized in the cost of service of a pipeline and when it is recognized as a deduction for income tax purposes. As a result of

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[13] Pet. App. 57a-67a. The method by which the Commission determines which consolidated tax benefits must be shared with the pipeline's ratepayers—the "benefits/burdens test"—was originally articulated by the Commission in *Southern California Edison Co.*, 59 F.P.C. 2167 (1977).

changes in the tax laws, pipelines (and their affiliates) now deduct depreciation at an accelerated rate. For rate-making purposes, however, depreciation is still taken evenly over the life of the asset. The Commission accounts for this and other timing differences in its rate-making through a policy of normalization.[14] The rationale of that policy is perfectly consistent with the rationale of the stand-alone policy; both seek to match the tax effect and rate effect of an expense. Accordingly, as the Commission explained, its stand-alone policy reaches substantially the same result as would "a proper application of Charlottesville's method", but does so much more simply, with a consequent saving of scarce administrative resources. (Pet. App. 75a).[15]

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[14] Under its normalization policy, the Commission analyzes the tax deduction that produces the tax loss in question to determine whether the loss is permanent or is due simply to the timing of when the deduction is taken. In those cases where the tax loss is due to the timing of a deduction, the Commission defers the tax reduction effect of a deduction to the period when the expense is incurred for rate purposes. This procedure matches the recognition of the tax expense with its recognition in income for rate purposes. The Commission's normalization policy was upheld in *Public Systems v. FERC*, 709 F.2d 73 (D.C. Cir. 1983).

The petition not only glosses over the importance of normalization. It also incorrectly states that the Columbia System's tax savings are "permanent tax savings". Petition at 24. The Commission's analysis of the tax deductions of the Columbia System, however, demonstrated that normalization almost entirely eliminated the tax losses of the gas supply companies, leaving only the parent's interest loss as a "permanent" loss to be reflected and "flowed through to ratepayers by our stand-alone method." (Pet. App. 74a).

[15] Indeed, when petitioner's "actual taxes paid" theory is applied properly, with adjustment for normalization and recognition of the various available tax option alternatives, nothing is left of petitioner's extravagant claims that the stand-alone method saddles ratepayers with massive and unjustified tax costs. Throughout this proceeding petitioner has persisted in making unjustified comparisons which do not recognize timing differences and other relevant considerations such as the differences between tax allowances in

The Commission then proceeded to consider petitioner's claims that various burdens allegedly imposed on the Columbia pipelines' ratepayers required sharing a portion of the System's consolidated tax savings with the ratepayers. The Commission found that the connection between these alleged burdens and the tax savings reflected in the consolidated tax returns was either non-existent or too remote. (Pet. App. 76a-83a). As in Opinion 47, the Commission did find that ratepayers were entitled to share in the tax savings arising from the parent's interest, because they bore part of that interest cost. The Commission demonstrated, textually and mathematically, that such sharing was accomplished by using the parent's capital structure and interest costs in computing the Columbia pipelines' tax allowances, as had been agreed in the settlement of other issues. (Pet. App. 87a-98a).

After the Commission denied petitioner's request for rehearing, petitioner again sought review in the court below. As a different panel of the court had earlier done in *Charlottesville I*, the court again rejected petitioner's argument that the stand-alone policy was *per se* unlawful under this Court's decision in *United* (Pet. App. 15a-23a). The court carefully canvassed the Commission's decision and considered and rejected all of petitioner's contentions, which it variously described as "insubstantial", "unpersuasive", "incomprehensible", resting upon an "astonishing misconception" and "appallingly wrong" (Pet. App. 15a, 24a-25a). The court also exhaustively reviewed the history of the Commission's ef-

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rates and tax reporting. Tax allowances for ratemaking purposes are estimated and set prospectively, while tax returns record past events and the choices actually made among various options. Previous misleading comparisons advanced by petitioner have been discredited for these reasons by the Commission and the court below (Pet. App. 83a-87a; 20a, n.11). Undaunted, petitioner goes outside the record to make more unwarranted and meaningless comparisons in the petition (Petition n.7 pp. 8-9, and n.11 p. 13).

forts to deal with the consolidated tax issue in fixing tax allowances and the treatment by the courts of the concept of "actual taxes paid." The court concluded that "the imprecision of the 'actual taxes paid' formulation is exceeded only by the name of the Holy Roman Empire: two out of the three words are wrong." (Pet. App. 19a-20a). Instead, the court suggested "the principle should be expressed 'actual or estimated taxes paid or incurred'—whereupon it ceases to constrain the Commission with regard to taxes any more than the Commission is constrained with regard to its treatment of other expenses. Which is as it should be." Pet. App. 20a. Consequently, the court held (Pet. App. 23a):

> "[W]e are persuaded that the Commission's stand-alone approach is reasonable enough to survive our highly deferential review, *see Permian Basin Area Rate Cases*, 390 U.S. at 791 and reaffirm the holding of *Charlottesville I*, 661 F.2d at 949-50, that it is lawful."

The court also affirmed the Commission's application of its stand-alone policy to the facts of this case (Pet. App. 23a-37a). Although the court noted there were a "number of plausible ways" to determine the tax liability attributable to the operations of a regulated company,

> "[t]he approach the Commission has chosen, allowing those deductions made possible by charges to the ratepayers, is an entirely reasonable one, beyond our authority to upset."

Pet. App. at 32a (citations omitted).[16]

A petition for rehearing and a suggestion for rehearing *en banc* were both denied.

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[16] The court's opinion, which appears at Pet. App. 1a-37a, is reported at 774 F.2d 1205.

ARGUMENT

Summary. The Commission acted reasonably and within the scope of its authority when it used its stand-alone policy to fix the tax allowances in this case, as the court below held. That holding was plainly correct. It rests solidly on careful consideration of the matter, not once but twice, by the Commission and the court below. There is no conflict of decisions or any reason for further review.

1. *There is no conflict with this Court's United decision.* Petitioner devotes most of its petition to a labored argument that the stand-alone policy used by the Commission and upheld by the court of appeals conflicts with *FPC v. United Gas Pipe Line Co.*, 386 U.S. 237 (1967), which, petitioner asserts, requires the Commission to follow an "actual taxes paid" principle in fixing tax allowances. If such a conflict exists, surely it could be demonstrated in less than the 12 pages petitioner uses for that purpose. In fact, there is no conflict, as two different panels of the court below have held in this case.

In the *United* case the question was whether the Commission had the power to do what it did—not whether it was required to do so. As the Court stated, using the Commission's words, "the issue is one of determining 'the proportion of the consolidated tax which is reasonably attributable to the gas company *vis a vis* [its] other . . . affiliates.' " 386 U.S. at 245. The Court concluded that the allocation method chosen by the Commission was neither "erroneous" nor "contrary to its statutory authority." *Id.* In thus upholding the Commission's choice of method, the Court did not restrict the Commission to any "actual taxes paid" or other formula. Instead, it recognized and emphasized the broad authority of the Commission to choose any formula, constrained only by the statutory requirement that rates be "just and reasonable" (*Id.* at 246):

> " 'When Congress, as here, fails to provide a formula for the Commission to follow, courts are not warranted in rejecting the one which the Commission employs unless it plainly contravenes the statutory scheme of regulation.' *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589. 'If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the Act is at an end. The fact that the method employed to reach that result may contain infirmities is not then important.' *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602."

As the court below has twice held, each time by a different panel, the stand-alone formula "plainly" does not "contravene the statutory scheme."

Moreover, the method upheld in *United* was not the rigid "actual taxes paid" dogma advocated by petitioner. Adjustments were made for timing differences and other reasons.[17] Likewise here, as the Commission noted, similar adjustments would have to be made in order to apply petitioner's method properly, and that would require great administrative effort to arrive at substantially the same result as the stand-alone method achieves much more simply (Pet. App. 73a-75a).

A proper reading of *United* thus reveals a very different picture from the one portrayed in the petition, and confirms the absence of any conflict. The Commission even then was grappling with the complex issue of how fairly to determine the tax allowances of pipelines that join in the filing of consolidated tax returns, and was making appropriate adjustments rather than applying a mechanical formula. As the Commission explained here, this process has been an evolutionary one. The stand-

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[17] As stated at 386 U.S. 239, the method used in *United* was developed by the Commission in *Cities Service Gas Co.*, 30 F.P.C. 158. The adjustments made by the Commission were explained at 30 F.P.C. at 162-63, and were discussed by the Commission here (Pet. App. 73a-74a).

alone policy is the latest refinement, adopted by the Commission in view of changes in the industry and in the tax laws. (Pet. App. 54a-57a). Nothing in *United* precludes the Commission from making such an informed policy choice—one which accords with present realities and the requirements of the Natural Gas Act—instead of the mythical, unworkable and outmoded "actual taxes paid" formula advocated by petitioner.[18]

2. *The Commission's stand-alone policy is a rational choice among alternatives which the Commission satisfactorily explained and supported.* The reasonableness of, and the justification for, the stand-alone policy are fully shown by the Commission's exhaustive Opinion No. 173 (Pet. App. 38a-98a), which reconsiders the policy choice "from the ground up", explains why the Commission adheres to the stand-alone policy it first announced in 1972, and shows how that policy applies to the facts of this case.

All relevant considerations are examined. The differences between ratemaking and tax principles are discussed. (Pet. App. 45a-49a, 83a-87a). The theory and practice of the stand-alone policy are explained. It is pointed out how the policy does not ignore the consolidated tax return or its tax reducing benefits and produces "an allocation of the consolidated tax liability that is cost-justified and just and reasonable" (Pet. App. 45a-54a). The prior "flow through" method for setting tax allow-

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[18] The subsequent history of *United*, which petitioner says is not relevant (Petition at 10, n.9), also confirms the latitude to be accorded the Commission's choice and application of method. On the remand the Fifth Circuit, over the Commission's objection, proceeded to decide how to apply the formula regarding jurisdictional and non-jurisdictional activities. The Court reversed, noting that its prior decision had "sustained" the Commission's authority to use the *Cities Service* formula, and holding that application of it was a matter for the Commission to decide "in the first instance". *FPC v. United Gas Pipe Line Co.*, 393 U.S. 71 (1968).

ances for utilities joining in consolidated tax returns is reviewed and the Commission explains why the stand-alone policy is now preferable because of changes in the industry and in the tax laws. (Pet. App. 54a-75a).

All of the contentions of petitioner are considered and found wanting. Its "actual taxes paid" approach, when properly applied by giving effect to normalization and other necessary adjustments, produces substantially the same result as the stand-alone policy, but in a much more difficult and cumbersome way. (Pet. App. 74a-75a). The stand-alone policy gives the ratepayers the benefit of the tax savings resulting from the burden charged to them, namely, their part of the parent company's interest expense. (Pet. App. 87a-98a). None of the other burdens asserted by petitioner justify giving ratepayers any of the other consolidated tax "savings". (Pet. App. 75a-83a). Those other savings were due to the losses of the four gas supply companies and those losses were not borne by the ratepayers. (Pet. App. 74a).

The Commission's stand-alone policy—with its benefits/burdens and cost-of-service tests—thus has the virtue of protecting both ratepayers and investors. It does so by distinguishing between situations where the ratepayers have borne the burden of a tax-reducing expenditure and those where they have not. Thus tax savings are flowed through when the ratepayers are charged with the expense that produces the savings, but there is no flow through where the ratepayers do not bear that expense. This result is not only equitable; it also recognizes the practicalities involved. To require flow through of savings resulting from expenses not borne by ratepayers would be futile—for as the Commission and the court of appeals recognized (Pet. App. 83a-87a, 21a-23a), the parent company and its shareholders have the power to eliminate consolidated tax savings by taking advantage

of the various other options permitted by the Internal Revenue Code.

The basic point here is that the parent company and its shareholders have complete control over the regulated pipeline's profits. If they choose to invest those profits in nonjurisdictional activities, the pipeline's ratepayers should be insulated from the consequences of that private decision (whether those activities produce a profit or a loss) in order to maintain the dichotomy inherent in the Natural Gas Act. The stand-alone policy gives ratepayers the insulation and protection needed against such choices. As the Commission explained, it is "unacceptable" to have the rates charged to ratepayers determined "because of the way the members of the groups have chosen to adjust their earnings and profits." (Pet. App. 86a).

Petitioner makes no attempt to deal with these and other complexities involved in the Commission's analysis, for obvious reasons. The Commission's thorough and lucid discussion of the problems it faced, and why it chose the stand-alone policy to deal with those problems, simply leaves no room for credible attack. As the court below correctly concluded, the Commission's decision "is an entirely reasonable one, beyond our authority to upset." (Pet. App. 32a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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March 1986

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